IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 87 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G.S.R.T. CORPORATION

Versus

GULABSHANKER D. JOSHI

Appearance:

1. Special Civil Application No. 87 of 1990

MR HARDIK C RAWAL for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 09/01/2002

ORAL JUDGEMENT

The present petition is filed by GSRTC challenging the judgement and award of the Labour Court, Rajkot, in Reference (LCR) No.1320 of 1986.

2 The facts of the case are that the respondent-workman driver was chargesheeted for having caused an accident on 7.6.1978 at about 3.45 AM near Mitharohar Patia and in that accident two persons lost their lives and 27 persons got injured. It is required to be noted that in the criminal proceedings arising out of the same accident the respondent-driver was acquitted. But in MAC proceedings the ST driver was held to be 80% negligent and the driver of the stationary truck with which the ST bus collided was held to be negligent to the extent of 20% on the ground that the driver of the stationary truck had not taken care to warn about the existence of the stationary to the passing vehicles.

3 This Court while issuing Rule on 11.1.1990 had granted ad interim relief of stay of the award granting full wages on the condition that the petitioner-corporation deposits 50% of the back-wages in the Tribunal. The Court also granted liberty to the workman to withdraw the same as and when deposited. The Court had clarified that no stay is granted against the reinstatement. In the light of that order the respondent-workman was reinstated and on reaching the age of superannuation has already retired from service. Now therefore the question remains only of remaining 50% of back-wages. Taking into consideration the fact that the respondent-workman is held to be 80% negligent in MAC proceedings acquittal in the criminal proceedings does not help the respondent-workman.

4 The learned advocate Mr M.H. Rathod appearing for the respondent - driver relied upon a judgement of the Apex Court in the matter reported in AIR 1999 SCW 1098 to contend that when departmental proceedings and criminal case are based on `identical set of facts', `evidence in both the proceedings is common', if the employee is acquitted in criminal case, and in the departmental proceedings the order of dismissal is passed before the order is passed in the criminal case, the same is liable to be set aside. There cannot be any dispute about the proposition laid down by the Apex Court. But the question remains is as to whether in the present case, the departmental proceedings and criminal proceedings are based on identical set of facts and if yes, whether the evidence in both the proceedings is common. If the answer is `no', the decision of the Apex Court is of no help to the respondent-workman.

5 The learned Labour Judge while awarding 100% back wages relied upon the observations of the MAC Tribunal,

which are quoted in paragraph 6 of the award. The learned advocate Mr Hardik Raval appearing for the petitioner-corporation made available certified copy of the judgement and award of the MAC Tribunal, which is taken on record. Mr Raval invited the attention of the Court to the other relevant portion of the judgement and award of MAC Tribunal. The portion which is relied upon by Mr Raval is in para 36 (page 47) of the judgment and award of the MAC Tribunal, which reads as under:-

> "He has also stated that as he was coming near the truck, he has made his light dim and full. The road on the spot is sufficiently broad to allow two vehicles in opposite direction to cross each other at the same time. There is no other reliable independent evidence supporting the evidence of the ST driver that that before the accident, a tanker in full light had passed by the ST Bus on account of which his eyes were dazzled. This seems to have been a concoction, with a view to avoid the liability in the accident."

Mr Raval submitted that in view of the fact recorded by MAC Tribunal to the effect that "he has made his light dim and full" the case of the respondent-workman to the effect that the light was defective will not survive. Mr Raval also submitted that thereafter further averments that `he had requested the ST Corporation to produce the slip by which he disclosed the defect to the ST Corporation but the slips are not produced by the Corporation on the ground that the same were not traceable' will also be of no consequence. Taking into consideration the fact that the MAC Tribunal has held that the respondent-workman was negligent to the extent of 80% and has observed, "Of course, mainly it was the negligence of the ST driver, which caused the accident because had he been more careful on seeing the truck he would have stopped his bus on the left hand side from sufficient distance, as the tanker was crossing over, so as to overtake it from the road side and could have averted the accident. But the act of the truck driver in leaving the truck in an unattended position, without keeping any normal signal to warn the vehicles passing by about the existence of the truck there, is also a factor which has contributed to the present accident."

6 Taking into consideration the fact that as no stay was granted against the reinstatement the respondent-workman was reinstated and thereafter he has

reached age of superannuation and has retired from service, the present award is modified qua the back wages to the extent that "the respondent-workman be paid only 50% back wages" which, it is reported, is already deposited and is withdrawn by the respondent-workman.

7 Rule is made absolute to the aforesaid extent.
No order as to costs.

(Ravi R Tripathi, J.)
(mohd)